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No. 651

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

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STATES OF WISCONSIN, COLORADO AND MINNESOTA,
*Petitioners,*

v.

STEWART UDALL, Secretary of the Interior, *Respondent.*

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STATE OF MICHIGAN, *Petitioner,*

v.

STEWART UDALL, Secretary of the Interior, *Respondent.*

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## PETITIONERS' REPLY BRIEF

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The facts and arguments set out in the joint petition, including the numerous record citations, are a complete answer to respondent's opposing brief. However, the following additional comments should be made.

### I

It is assumed from respondent's silence that he recognizes, as was urged in the joint petition (pp. 10-11), that the method of apportionment he has now created, unlike the method used consistently for over

20 years and sanctioned by the Congress, is wholly unworkable. But the respondent in essence argues that, even if his newly fashioned method is unworkable, it is somehow more equitable than the old method.[1] Even in this regard, however, respondent refutes his own position. The yardstick for fairness, which he endorses, is the existence "of a relationship between the need for assistance and a rational apportionment of the revenues" (Br. 10-11). This is precisely the result achieved under the method which the respondent now seeks to abandon.

Respondent finally recognizes (Br. 11, fn. 6), as petitioners have urged, that multiple license systems have a legitimate and necessary function in meeting the resource management problems of the states. In passing the Pittman-Robertson Act in 1937, the Congress did not intend to disturb the state license systems, which are designed to meet conditions peculiar to each state, and which were then, as now, multiple in nature in the majority of the states.[2] The State of Michigan,

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[1] As the court below held, the Pittman-Robertson Act gives no discretion to the respondent with respect to the formula (Pet. 12a). Consequently, even if a new formula of apportionment were desirable in order to meet what the respondent now views as changed conditions, the Congress is the sole forum for any revisions, and the respondent has no authority to make them.

It is to be noted that the statement of the International Association of Game, Fish and Conservation Commissioners on which the respondent relies has no relevance in explaining a statute enacted some twenty years earlier. The opinions these officers express are their own, and they are in no position to bind the states.

[2] Although the assertion that licensing structures in 1935 were simple is basic to respondent's position, he refrains, with a telling silence, from answering the refutation made in the joint petition (p. 7, fn. 3). The record references he cites for his position (Br. 12) simply do not support it.

for example, has for over 50 years issued separate licenses to hunt big and small game (Pet. 4) in "recognition of the problems in resource management and restoration with respect to each type of game animals affected" and which the Michigan Conservation Department "must try to solve if these [game] species are to continue to abound for the growing army of hunters" (Pet. 8). In these circumstances, a relatively larger apportionment to that state is wholly equitable and rational, because there is the greater "need for assistance" than there is where a state does not have such multiple problems. Accordingly, it is patently fallacious to argue, as does the respondent, that because the apportionment is greater, it is therefore inequitable.

## II

Respondent seeks to create the impression that the statute had been consistently construed as he now urges, though he concedes that the administrative practice did not "fully" accord with that construction (Br. 12-13).[3] He attempts to support his position by wrenching out of context the statement in the Federal Aid Manual of 1938 that "the law requires the number of license holders and not the number of individual licenses" (Br. 12). As was pointed out in the joint petition (p. 12, fn. 11), this statement was made *only* to justify the exclusion of a permit ancillary to a general license concerning which there never has been any issue. The manual in plain and clear language

[3] The fact is that the apportionment was always made on the basis of licenses issued. The District Court so found explicitly (Pet. 6a). This was conceded in the District Court by the respondent's counsel in a colloquy with the court which the dissenting judge below quoted (Pet. 21a).

stated that the apportionment "must be based . . . on number of licenses" and directed that "there should be included all licenses defined as hunting licenses by state laws." (Pet. 12, fn. 11). The Department's understanding and interpretation, and restated repeatedly thereafter, are thus unequivocally memorialized.[4]

Moreover, respondent's position is flatly contradicted by a letter written by the administrator of the federal aid to wildlife program. Under date of November 14, 1957, this official answered an inquiry from Virginia's Commission of Game and Inland Fisheries "concerning the steps your Commission would have to follow to expand the license base used for computing apportionments" by declaring:

> "The direct answer to your question would be that your Legislature would merely have to enact legislation to provide that a separate license would be required for the hunting of every different species of game animal (or fish) in the Common-

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[4] In his efforts to create the impression that attempts were made to administer the statute in accordance with his present interpretation, respondent states (Br. 5) that from the beginning the Department "undertook to screen the certifications made by States to prevent, insofar as possible, one individual from being counted as more than one holder". Respondent omits, however, the next statement in the affidavit from which the foregoing was taken, i.e., "This screening eliminated obvious duplications and errors, such as licenses not pertaining to hunting and tags or permits which clearly required the holder to have a basic prerequisite license" (R. 28). In other words, the screening did no more than eliminate permits ancillary to general licenses previously issued, and did not undertake to eliminate separate licenses issued as part of a multiple licensing structure, even where the so-called duplications were obvious on the face of the certification (see Pet. 12), for the very good reason that the Department's construction of the law required these licenses to be counted.

wealth of Virginia. *Each license would be independent of the other, and an individual holding such a single license would constitute a paid hunting license holder.*" (Emphasis supplied; R. 238-239. See also R. 25-26.)[5]

## III

Since state license structures, as respondent recognizes, are fashioned in terms of needs and problems of resource management, it is "unseemly" to suggest that the long-established apportionment formula would be used in "an unseemly grab for federal funds" (Br. 9, fn. 5). There is absolutely nothing in the record to warrant the suggestion that state license structures would be modified except to meet resource management requirements. As the Chief Judge below pointed out:

> "The Secretary's suggestion that, under the District Court's ruling, the states might multiply their hunting licenses in order to obtain a larger portion of federal funds imputes venality to them without any real reason for doing so. I am unwilling to believe, without convincing proof, that the legislatures of sovereign states would enlarge

[5] While the administrator referred to resulting duplication, there is no question that the letter expressed the official view that the statute and administrative practice required the counting of licenses issued, not individuals. Any suggestion of duplication which might result from the settled interpretation and application of this statute does not point to the conclusion that either the interpretation or the application is therefore in error. As pointed out (fn. 1, *supra*), the Congress specifically withheld from the Secretary the authority in any way to revise the statutory formula, even if he should consider it desirable.

the number of their hunting licenses from such an unworthy motive" (Pet. 23a-24a).

Respectfully submitted,

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